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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,818	05/23/2001	Daniel M. Gorman	DX01170K	8990
28008	7590	07/12/2004	EXAMINER	
DNAX RESEARCH, INC. LEGAL DEPARTMENT 901 CALIFORNIA AVENUE PALO ALTO, CA 94304			JIANG, DONG	
			ART UNIT	PAPER NUMBER
			1646	

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/863,818

Applicant(s)

GORMAN, DANIEL M.

Examiner

Dong Jiang

Art Unit

1646

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 5/21/04 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 21 May 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: 21-25 and 27.

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


LORRAINE SPECTOR
PRIMARY EXAMINER

Continuation of 3. Applicant's reply has overcome the following rejection(s): the rejection of claims 22 and 24 under 35 USC 112, second paragraph.

Continuation of 5. does NOT place the application in condition for allowance because: claims 21-25 and 27 would remain rejected under 35 USC 101 and 112 first paragraph for the reasons of records set forth in the previous Office Actions, mailed on 3/27/03 and 12/5/03, and the reasons below.

Applicants traverse the rejection, and argue that the post filing date references support that DCRS9, the receptor for IL-17C, is involved in airway neutrophilia, and thus, DCRS9 is more likely than not to be biologically significant in airway disorders, and is involved in innate immunity; and that applicants, at the time of filing, did believed and disclose that DCRS9 was an IL-17R family member, and thus, one skilled in the art would more likely than not believe that DCRS9, through binding of its ligand, would be relevant for increased airway neutrophilia. Applicants argument has been fully considered, but is not deemed persuasive because the post filing date references cannot be used to support utility not disclosed in the specification, i.e., increased airway neutrophilia. Even if the sequence alignment among DCRSs and IL-17Rs provided in the specification were indicative that DCRS9 was an IL-17R family member, there is no automatic correlation established in the art that any or every IL-17R family member is related to increased airway neutrophilia. Furthermore, the assertion that DCRS9 is "involved" in innate immunity or "modulate" innate immunity response clearly indicates a guess, and that a specific and substantial utility was not defined for the protein at the time the invention was filed as these terms can be interpreted either positively or negatively, and therefore it does not constitute an assertion of a specific and substantial utility.

Further, the amended claim 24 would remain rejected under 35 USC 112, second paragraph, because it is still unclear what is the relationship between element b) and the rest of the kit.

Continuation of 7. see item 5 above.